

**RISSMAN, BARRETT, HURT,  
DONAHUE & McLAIN, P. A.  
ATTORNEYS AT LAW**

STEVEN A. RISSMAN  
ROBERT C. BARRETT  
JENNINGS L. HURT III  
ROBERT A. DONAHUE  
JOHN E. McLAIN III  
RICHARD S. WOMBLE  
STACIE B. GREENE  
THEODORE N. GOLDSTEIN  
RAYMOND A. LOPEZ  
VANCE R. DAWSON  
RICHARD B. MANGAN JR.  
HENRY W. JEWETT II  
DANIEL M. POLLACK  
ART C. YOUNG  
NICOLE D. RUOCCO  
DANIEL T. JAFFE  
BEATRIZ E. JUSTIN  
GREGORY GIANNUZZI  
DAVID K. BEACH  
F. DEAN HEWITT  
EDWARD M. COPELAND IV  
DAVID R. KUHN  
G. WILLIAM LAZENBY IV  
R. CLIFTON ACORD II  
JILL M. SPEARS  
JEFFREY J. KERLEY  
KARISSA L. OWENS

OF COUNSEL  
ROBERT J. JACK  
JOHN P. DALY

EXECUTIVE DIRECTOR  
W. SCOTT PETERSON

201 EAST PINE STREET  
15TH FLOOR  
P.O. BOX 4940  
ORLANDO, FLORIDA 32802-4940  
TELEPHONE (407) 839-0120  
TELECOPIER (407) 841-9726  
ORLANDO@RISSMAN.COM

TAMPA COMMONS  
ONE NORTH DALE MABRY HIGHWAY  
11TH FLOOR  
TAMPA, FLORIDA 33609  
TELEPHONE (813) 221-3114  
TELECOPIER (813) 221-3033  
TAMPA@RISSMAN.COM

709 SEBASTIAN BOULEVARD  
SUITE B  
SEBASTIAN, FLORIDA 32958  
TELEPHONE (772) 228-3228  
TELECOPIER (772) 228-3229  
SEBASTIAN@RISSMAN.COM

WWW.RISSMAN.COM

PLEASE REPLY TO: ORLANDO

October 22, 2012

**FLORIDA LAW WEEKLY**

Week of October 12, 2012

**Statute of Limitations/Frivolous Appeal**

Miranda v. Alterra Claire Bridge,  
37 Fla. L. Weekly D2316 (Fla. 1st DCA Oct. 3, 2012)

The claimant appealed the JCC's dismissal of her Petition for Benefits with prejudice for PTD. The Court found no basis for the appeal and summarily affirmed. They reviewed the record on appeal and the initial brief and said the appeal was "devoid of meritorious argument." The claimant agreed the PFB was filed more than two years after the injury, and more than one year since the last provision of benefits. The claimant also did not argue the Employer/Carrier was estopped from raising the statute of limitations as a defense. The claimant argued that because the JCC could have modified a 2009 Order denying a one-time change, there was an issue of material fact that should have precluded the JCC from entering a Summary Final Order. The Court noted first no Motion for Modification was filed so the argument was theoretical. Second, even if the motion was filed, it would have been untimely because § 440.28, Florida Statute, requires a Motion for Modification to be filed within two years

AMY L. BAKER  
AMANDA L. BRUS  
STEVEN B. BURRES  
DEREK J. BUSH  
JEFFREY A. CARTER  
SEAN M. CROCKER  
CHRISTOPHER E. DENNIS  
JAMES E. FAVERO III  
SUSAN R. FULLER  
PAUL B. FULMER  
JANNINE C. GALVEZ  
ELISE J. GEIBEL  
CHRISTOPHER A. HANSON  
RYAN W. HOYLE  
VICTORIA S. LUNA  
LAURA F. LYTLE  
ERIC F. OCHOTORENA  
JEREMY T. PALMA  
JEFFREY M. PATNEAUDE  
D. BLAKE REHBERG  
KELLEY A. RICHARDS  
RICHARD B. ROBBINS  
JUAN A. RUIZ  
GREG R. SCHMITZ  
BRYAN R. SPENCER  
LARRY D. SPENCER  
MEREDITH M. STEPHENS  
ELIZABETH M. STUART  
F. PAUL TIPTON  
NICOLETTE E. TSAMBIS  
JASON R. URBANOWICZ  
MEGHAN C. WHISENHUNT  
CHRISTINE V. ZHAROVA

after the date the copies of the Order rejecting a claim is mailed to the parties. Finally, even if the motion was timely filed, the facts would not support modification. The Court felt the arguments were baseless and frivolous and ordered the Claimant to show cause why 57.105 sanctions should not be entered.

### **Taxable Costs**

Frederick v. Monroe County School Board,  
37 Fla. L. Weekly D2316 (Fla. 1st DCA Oct. 5, 2012)

Claimant filed a Petition for Benefits for PTD. An EMA was appointed and opined the claimant was not PTD, so the claimant dismissed the PFB. The Employer/Carrier, as the prevailing party, filed a Motion to Tax Costs for \$16,044.10 under § 440.34(3), Florida Statute. The claimant argued because she filed the PFB in good faith, awarding the Employer/Carrier costs would be unfair and deny her right to access to the Court. The JCC awarded the Employer/Carrier \$11,834.35 in costs. On appeal, the Court was constrained to affirm because the statute permits awarding costs to the prevailing party. The Court felt that as a matter of public policy, the legislature should consider the claimant's constitutional argument, and consider whether costs should be awarded against a claimant who filed a PFB in good faith.

### **Medical Referral & Authentication of IME Report**

Young v. American Airlines,  
37 Fla. L. Weekly D2316 (Fla. 1st DCA Oct. 8, 2012)

The JCC denied the claimant's request for a cardiologist and PTD benefits. The cardiologist was denied because the referral was from 2006 and the JCC did not find there was a current need for the referral. The Court reversed because there is no legal authority that states referrals can become stale in absence of change in claimant's condition. The Court also reversed the denial of PTD benefits because the JCC relied on the Employer/Carrier's IME, however, the IME report was never authenticated and the exception for authentication in § 440.29(4), Florida Statute, does not apply to IME reports. Since the IME report was not allowed, the Employer/Carrier's vocational rehabilitation report relying on the Employer/Carrier's IME was also not allowed. In reversing the

Court declined to give the Employer/Carrier a second chance to authenticate.